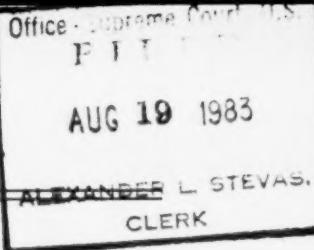


No. 82-2034

IN THE



Supreme Court of the United States

October Term, 1982

IN RE Oil Spill by The Amoco Cadiz
Off The Coast of France on March 16, 1978

ASTILLEROS ESPANOLES, S.A.,

Petitioner,

-VS.-

STANDARD OIL COMPANY (INDIANA), AMOCO
INTERNATIONAL OIL COMPANY, AMOCO TRANSPORT
COMPANY, CLAUDE PHILLIPS, and CONSEIL
GENERAL DES COTES DU NORD, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF RESPONDENTS THE COTES DU NORD PARTIES IN OPPOSITION

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August 19, 1983

Question Presented

Was the court of appeals correct in affirming the district court's decision that the Petitioner, a Spanish corporation, had sufficient contacts with Illinois to subject it to personal jurisdiction?

TABLE OF CONTENTS

	PAGE
Question Presented	i
COUNTER-STATEMENT OF THE CASE	1
A. Pre-contract Negotiations	3
B. The Contract.....	3
C. Subsequent Contacts with Illinois	4
REASONS WHY PETITION SHOULD BE DENIED	5
ARGUMENT	5
I The Courts Below Correctly Held that Assertion of Personal Jurisdiction over Astilleros in Illinois Comports with Due Process	5
II Petitioner Has Not Set Forth any Basis for Review by this Court	10
CONCLUSION	13

TABLE OF AUTHORITIES

	PAGE
<i>Cases:</i>	
<i>Bishop v. Wood</i> , 426 U.S. 341 (1976)	11
<i>Butner v. United States</i> , 440 U.S. 48 (1979)	11
<i>Green v. Advance Ross Electronics Corp.</i> , 86 Ill. 2d 431, 427 N.E. 2d 1203 (1981)	11
<i>Hanson v. Denkla</i> , 357 U.S. 235 (1958).....	6, 10
<i>International Shoe Co., v. Washington</i> , 326 U.S. 310 (1945).....	5, 7, 8
<i>Koplin v. Thomas, Haab & Botts</i> , 73 Ill. App. 2d 242, 219 N.E. 2d 646 (1st Dist. 1966).....	11
<i>Kulko v. California Superior Court</i> , 436 U.S. 84 (1978).....	6, 11
<i>McGee v. International Life Ins. Co.</i> , 355 U.S. 220 (1957).....	9
<i>Rush v. Savchuk</i> , 440 U.S. 320 (1980)	8
<i>Shaffer v. Heitner</i> , 433 U.S. 186 (1977)	5, 8, 9
<i>World-Wide Volkswagen Corp., v. Woodson</i> , 444 U.S. 286 (1980).....	6, 7, 8, 9, 11
<i>Statutes and Rules:</i>	
Ill. Rev. Stat. Ch. 110, §2-209 (1983)	11
U.S. Sup. Ct. R. 17.1	5, 10

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COUNTER-STATEMENT OF THE CASE

Pursuant to a contract which it negotiated and executed in Chicago in 1970, Petitioner Astilleros Espanoles, S.A. ("Astilleros") designed and built the Amoco Cadiz, a supertanker which was wrecked off the coast of Brittany in March, 1978. More than

200,000 tons of crude oil escaped from the vessel, polluting more than 200 miles of the coastline of France. This massive pollution gave rise to a suit for negligence, breach of warranty and strict liability against Astilleros as set forth in the complaint of the Respondents herein, the Côtes du Nord parties.* In the same action, the Côtes du Nord parties sued Standard Oil Company (Indiana) and its related companies, Amoco Transport Company and Amoco International Oil Company which owned and operated the Amoco Cadiz.** This suit was brought in the United States District Court for the Northern District of Illinois, in Chicago. The decision as to liability of the Amoco parties is *sub judice*, after a six month trial. The Amoco parties asserted third-party claims against Astilleros for indemnification and contribution, contingent upon the success of the Côtes du Nord parties and others against the Amoco parties in the trial as to liability and a subsequent trial as to damages.

Astilleros moved in the district court to dismiss the complaints against it, alleging, *inter alia*, lack of personal jurisdiction over it in Illinois. After the district court denied that motion, Astilleros did not file an answer and refused to participate in any discovery. Thereafter, after the trial against the Amoco parties had begun, the Respondents herein obtained judgments by default and Astilleros appealed. The United States Court of Appeals for the Seventh Circuit unanimously affirmed the district court's decision that Astilleros was subject to personal

* Referred to collectively as "the Côtes du Nord parties", Respondents are located in the province of Brittany in France. They include the Department (county) of Côtes du Nord, 43 communes (towns) in Côtes du Nord, 33 communes in the Department of Finistere, and 26 private party claimants including business organizations, oyster farmers, individual businesses and environmental organizations, all of which sustained substantial damages as a result of the oil pollution from the wreck of the supertanker Amoco Cadiz on March 16, 1978. The governing body of the Department of Côtes du Nord, its general council, is listed first in the caption. A complete list of the Côtes du Nord parties appears at pp. i-ii of Petitioner's Petition for Writ of Certiorari.

** Other claimants against the Amoco parties include the Republic of France and Petroleum Insurance Limited (on behalf of Shell U.K. Limited and Shell Nederland Raffianderij B.V., owners of the cargo which was lost).

jurisdiction in Illinois.* We respectfully submit that the decisions of the courts below were correct and that Astilleros' contacts with Illinois, detailed below, were sufficient to subject it to jurisdiction there.

A. Pre-Contract Negotiations

Astilleros is a Spanish corporation in the business of designing and manufacturing ships. Its relevant contacts with Illinois began in July, 1970. Four representatives of Astilleros, including its commercial director, chief naval architect and an attorney, went to Chicago at that time to negotiate with Amoco International Oil Company ("Amoco International"), a Delaware corporation with its principal place of business in Illinois and a wholly-owned subsidiary of Standard Oil Company (Indiana) ("Standard"). Those negotiations, which occurred over a two-week period, concerned the design, technical plans and specifications for the construction of an oil tanker, which was later named the Amoco Cadiz.

B. The Contract

The negotiations in Chicago culminated in a contract and a letter agreement, both dated July 31, 1970. In the forty-page printed contract, Astilleros agreed to design and build a 230,000 metric ton oil tanker in accordance with certain technical plans and specifications which are referred to throughout the contract and contained in the letter agreement. Astilleros agreed to deliver the vessel by July 31, 1974, for the contract purchase price of \$23,600,000.

The commercial director of Astilleros executed the documents in Chicago. The other signatory to the contract and the letter agreement was Robert S. Haddow for Amoco Tankers Company ("Tankers"), a company which was not yet in existence. Tankers was described in the contract as a corporation "[t]o be organized under the laws of the Republic of Liberia" which "[u]pon its

* A Petition for Rehearing with Suggestion for Rehearing in Banc was denied.

formation will be an affiliate of Amoco International Oil Company." According to the contract negotiated by Amoco International and Astilleros, Tankers was to come into being within sixty days of July 31, 1970.

The contract required Astilleros to send certain notices to Tankers by cable, with a confirming letter to:

AMOCO Tankers Company
c/o AMOCO International Oil Company
500 N. Michigan Ave.
Chicago, Illinois 60611
Cable Address: AMOCOSHIPS, Chicago.

The contract also required that Astilleros send an irrevocable letter of guaranty to Tankers in care of Amoco International at the Chicago address.

C. Subsequent Contacts With Illinois

Subsequent to the execution of the contract in 1970 Astilleros continued to have significant contacts with Illinois. During the construction period, in June, 1972, three representatives of Astilleros, including its United States agent, came to Chicago to meet with Amoco International's Manager of Marine Technical Services and his assistants. The meetings continued for two days and concerned technical matters relating to the construction of the Amoco Cadiz. In August, 1975, a year after delivery of the vessel, several representatives of Astilleros went to Chicago for more than a week to discuss with Amoco International guarantee items for the Amoco Cadiz. Astilleros also sent correspondence concerning the Amoco Cadiz to Tankers, c/o Amoco International, at the Chicago address, as required by the contract.

- In addition to its contacts with Amoco International concerning the Amoco Cadiz, Astilleros had a considerable number of additional contacts with the Amoco parties in Chicago: Astilleros negotiated and signed contracts for the construction of three sister ships to the Amoco Cadiz; and Astilleros repeatedly visited and telephoned Illinois to solicit other business from the Amoco parties.

REASONS WHY THE PETITION SHOULD BE DENIED

1. The decision of the court of appeals affirming the exercise of personal jurisdiction over Astilleros pursuant to the Illinois long-arm statute, is in accord with the past decisions of this Court.
2. The decision of the court of appeals presents no conflict with a decision of any other federal court of appeals on the same matter.
3. Astilleros' additional arguments present no "special and important reasons" for this Court to review the decision of the court of appeals. *See*, U.S. Sup.Ct. R. 17.1.

ARGUMENT

I

The Courts Below Correctly Held That Assertion of Personal Jurisdiction Over Astilleros in Illinois Comports With Due Process

There were more than sufficient contacts between Astilleros and the State of Illinois to permit assertion of personal jurisdiction such that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'." *International Shoe Co., v. Washington*, 326 U.S. 310, 316 (1945). *See, Shaffer v. Heitner*, 433 U.S. 186, 212 (1977).

Astilleros' activities in Illinois are undisputed and far exceed "minimum" contacts. They include the negotiation and execution of the contract and the letter agreement; negotiation of the technical plans and specifications for the vessel; repeated post-contract discussions concerning construction and operation of the Amoco Cadiz and its sister ships; post-contract correspondence sent to Chicago concerning the vessel; and repeated post-contract solicitation of business. As a result of its contacts with Illinois, Astilleros obtained significant revenue. Thus, Astilleros "purposefully avail[ed]" itself of the privilege of conducting activities" within Illinois and invoked "the benefits and protec-

tions" of Illinois law. *Hanson v. Denkla*, 357 U.S. 235, 253 (1958).

Despite its substantial and undisputed contacts with Illinois, Astilleros argues that the exercise of personal jurisdiction over it in Illinois in this case somehow conflicts with this Court's decisions in *Kulko v. California Superior Court*, 436 U.S. 84 (1978) and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). (Pet. at 9-16).* Astilleros is incorrect. Those decisions do not even suggest that the assertion of personal jurisdiction over Astilleros in this case is inappropriate.

In *Kulko*, the defendant was a New York resident who had no relevant contact whatsoever with California. His former wife, a California resident, brought an action there to modify a child custody and support agreement which the parties had entered into in New York. The sole basis upon which the California court premised jurisdiction was that, by consenting to have his daughter live in California during the school year and by sending her to California for that purpose, the defendant had performed a purposeful act in California sufficient to satisfy jurisdictional due process requirements. 436 U.S. at 94. This Court reversed, stating:

[T]he mere act of sending a child to California to live with her mother is not a commercial act and connotes no intent to obtain or expectancy of receiving a corresponding benefit in the State that would make fair the assertion of that State's judicial jurisdiction.

436 U.S. at 101.

The difference between this case and *Kulko* is clear. Astilleros' activities in Illinois were substantial, commercial and unquestionably connoted an "intent to obtain or expectancy of receiving a corresponding benefit" in Illinois. Indeed, Astilleros received more than \$23 million as a result of the contract it signed and negotiated in Illinois. Further, as the court of ap-

* Citations to the "Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit," filed by Petitioner is in the form "(Pet. at ____)." Citations to the Appendix are in the form "(A. at ____)."

peals correctly held, "Astilleros had the protection of Illinois' laws all the while that it was transacting business with Amoco in Chicago." (A. at 25).

This case is also different from *World-Wide Volkswagen*. There the defendants were held subject to personal jurisdiction in Oklahoma based solely upon the fact that an automobile which had been sold by the defendants in New York caused an injury to the plaintiffs in Oklahoma while they were driving through that state. This Court held that the exercise of jurisdiction over the defendants did not comport with due process, because the defendants had not carried on any activity in Oklahoma. 444 U.S. 295.

The court of appeals, in its opinion below, correctly recognized the distinction between this case and *World-Wide Volkswagen*:

But this is a very different case from *Volkswagen* . . . The defendants [in *Volkswagen*] had never "been" in Oklahoma in any sense and were therefore beyond the reach of the state's sovereign powers, which are territorially limited. But Astilleros has "been" in Chicago. The contract out of which Amoco's cause of action arises was signed there following extensive negotiations there, and followed by other meetings there related to the *Amoco Cadiz* contract and to contracts for other tankers to be built for Amoco. Astilleros had the protection of Illinois' laws all the while that it was transacting business with Amoco in Chicago. It had, we think, a sufficient presence within Illinois to satisfy the territorial notions that *Volkswagen* brought back into due process analysis of personal jurisdiction.

(A. at 25).

Astilleros contends further that there is no connection between its activities in Illinois and the claims asserted against it by the Côtes du Nord parties and that the assertion of jurisdiction would therefore be inconsistent with this Court's holding in *International Shoe Co., v. Washington*. Again, Astilleros is

wrong. In *International Shoe*, this Court recognized that due process is satisfied if the claims asserted against a nonresident defendant "are connected with the activities within the state." 326 U.S. at 319. This test was reiterated in *Shaffer v. Heitner*, 433 U.S. at 204, where this Court stated that, in order to satisfy due process, there must be a relationship "among the defendant, the forum, and the litigation. . . ." 433 U.S. at 204. See also *Rush v. Savchuk*, 440 U.S. 320, 327 (1980).* The purpose of requiring such a relationship is to insure that the defendant may reasonably anticipate being haled into court in the state where he conducts his activities. Thus, this due process requirement "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. That test is clearly satisfied in this case.

The claims asserted against Astilleros by the Côtes du Nord parties and by the Amoco parties, are based upon theories of breach of warranty, product liability and negligence. The claims are premised upon conduct of Astilleros which began in Illinois and which later included activities by Astilleros in Illinois. The contract which Astilleros negotiated and executed in Illinois is "related to the operative facts" and the "substance" of the litigation (see, *Rush v. Savchuk*, 444 U.S. at 329), since the claims turn on whether Astilleros adequately performed that contract in fulfilling its obligations to provide a seaworthy vessel.

Astilleros' assertion that it could not have foreseen the necessity of defending an action in Illinois is disingenuous. Had Astilleros wished to avoid the potential for personal jurisdiction in Illinois, it certainly could have structured its "primary conduct" in such a way as to assure that it would not be amenable

* Astilleros admits that the Illinois long-arm statute—upon which personal jurisdiction is predicated here—satisfies this due process requirement:

The constitutionally required nexus between the forum conduct and the cause of action is recognized in the Illinois long arm statute which provides that "only causes of action arising from acts enumerated herein may be asserted against a defendant. . ." (Pet. at 12).

to suit there.* For example, Astilleros could have demanded that the contract negotiations and execution occur in Spain. Astilleros could have rejected the opportunity to solicit further business in Illinois and could have forbidden its employees to travel to Illinois concerning the continued administration of the contract for the construction of the Amoco Cadiz. It did not do so. Rather, Astilleros availed itself of the opportunity and privilege of conducting activities in Illinois. Under these circumstances, as this Court stated in *World-Wide Volkswagen* 444 U.S. at 297:**

. . . it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state.

Thus, it is clear that the exercise of personal jurisdiction over Astilleros in this case by the federal courts in Illinois fully comports with the minimum contacts requirements of the Due Process clause and is consistent with the prior decisions of this Court.

* Astilleros certainly would be amenable to jurisdiction in Illinois, based on its contacts with that state, in an action on the contract. Cf. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957). The fact that the claims sound in tort is irrelevant, since they relate to the same jurisdictionally sufficient conduct.

** Astilleros' contention that the arbitration and choice of law clauses in the contract demonstrate that it could not foresee being subject to jurisdiction in Illinois is baseless. Considerations such as choice of law are not determinative in examining amenability to personal jurisdiction under the Due Process clause. *Shaffer v. Heitner*, 433 U.S. at 215.

II

**Petitioner Has Not Set Forth Any Basis
For Review By This Court**

Petitioner has not made any showing that this case is within any of the categories discussed in Sup.Ct.R. 17.1, which sets forth considerations governing review on certiorari. Yet, in an attempt to invoke a basis for review, Astilleros argues that the court of appeals *sua sponte* pierced the corporate veil of Tankers, a Liberian subsidiary of Standard, in order to find a basis for jurisdiction over Astilleros in Illinois. Astilleros claims further that this piercing presents a conflict with various other circuit court decisions on the same issue. This argument is without merit.

The language in the opinion of the court of appeals to which Astilleros points is not the basis for the court's holding that personal jurisdiction could properly be asserted over Astilleros in this case. (A. at 21-22). Rather, Judge Posner addressed the contention of Astilleros, reiterated in its petition for certiorari, (Pet. at 16), that Astilleros could not possibly have foreseen a suit in Illinois because it was a Spanish shipbuilding company contracting with a Liberian company for the construction of a vessel in Spain. Judge Posner correctly disposed of that argument by recognizing that the record is devoid of reference to "real Liberians." In fact, the record reflects that Astilleros negotiated in Chicago with Amoco International, a Delaware corporation with its principal office in Chicago, which was a wholly-owned subsidiary of Standard, which was also headquartered there. Tankers, a Liberian subsidiary formed after the contract was executed, was created by Amoco International to own the vessel during construction.

Moreover, the court's discussion of the corporate identities of the various Amoco parties is irrelevant to the determination of the jurisdictional issue in this case. The assertion of jurisdiction over a nonresident defendant must be based upon the activities of the *defendant* in the forum, and not upon the activities or identity of plaintiffs, cross-claimants or anyone else. As this Court made clear in *Hanson v. Denkla*, 357 U.S. at 253, it is

the defendant's activities in the forum which must be examined, and "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *See also, Kulko*, 436 U.S. at 93-94; *World-Wide Volkswagen Corp.*, 444 U.S. at 298.

Astilleros' attempt to bootstrap Judge Posner's discussion into a conflict between the circuits is frivolous. None of the cases cited by Astilleros involve a piercing of the corporate veil of the plaintiff in order to find personal jurisdiction over a defendant.

Astilleros also contends that the court of appeals' interpretation of the Illinois long-arm statute conflicts with a decision of the Illinois Supreme Court, *Green v. Advance Ross Electronics Corp.*, 86 Ill. 2d 431, 427 N.E.2d 1203 (1981). (Pet. at 12). However, the court of appeals' decision (as well as that of the district court) that a tortious act which "lies in the wake" of a transaction of business in the state satisfies the "arising from" language of the Illinois long-arm statute, Ill. Rev. Stat., Ch. 110, §2-209 (1983), is clearly in accord with Illinois decisional law. See, e.g., *Koplin v. Thomas, Haab & Botts*, 73 Ill. App.2d. 242, 219 N.E.2d 646 (1st Dist. 1966).

Green simply is not in point here. The case at bar concerns jurisdiction arising from the "transaction of any business" in Illinois under § 2-209(a)(1). *Green* dealt with jurisdiction arising from "the commission of a tortious act" in Illinois under § 2-209(a)(2). The court specifically declined to discuss any other basis for jurisdiction:

As the defendants assert long-arm jurisdiction solely on the ground that Green, Sr., committed a tortious act within this State, there is no occasion to consider any other possible basis for jurisdiction.

427 N.E.2d at 1206.

Furthermore, interpretation of state law by a court of appeals or a district court sitting in that state is entitled to great weight and is not an issue normally appropriate for review by this Court by on a petition for certiorari. *Butner v. United States*, 440 U.S. 48, 58 (1979); *Bishop v. Wood*, 426 U.S. 341, 345-46 (1976).

Astilleros also raises a "policy" argument that is worth little comment. (Pet. at 23-25). Astilleros claims that there is a question here of whether an alien corporation is entitled to the same protection under the Due Process clause as a United States resident. However, there is absolutely nothing in the record which suggests that the court of appeals based its decision upon the notion that Astilleros was somehow entitled to less due process than a United States resident. To the contrary, the court of appeals stressed that the due process restraints on a state's extraterritorial exercise of personal jurisdiction are even greater where the defendant is a foreigner. (A. at 25)

Finally, Astilleros argues that its petition for certiorari should be granted because this case presents questions substantially similar to those presented in *Helicopteros Nacionales de Colombia, S. A. v. Elizabeth Hall, et al.*, 82-1127. (Pet. at 8, 26). Once again, Astilleros is wrong. *Helicopteros* presents the issue of whether a nonresident defendant can be subjected to personal jurisdiction in a state based upon certain limited activities performed in the state which are unrelated to the conduct giving rise to the cause of action asserted against it. 51 U.S.L.W. 3636 (March 1, 1983). As demonstrated above, in this action there is a clear nexus between the activities of Astilleros in Illinois and the claims asserted against it. The jurisdictional issues in *Helicopteros* are distinct from the jurisdictional issues presented in this case, which do not merit review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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